

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NICO C. COURTNEY,

Plaintiff ,

vs.

OREGON DEPARTMENT OF STATE
POLICE, an agency of the State
of Oregon; and JIM RAGON,

Defendants.

Civ. No. 06-6223-TC

OPINION AND ORDER

Coffin, Magistrate Judge:

Defendant Oregon State Police (OSP) submits its bill of costs after prevailing on summary judgment as to all of plaintiff's claims (#100). For the reasons that follow, defendant's bill of costs is allowed.

Background

Plaintiff brought six claims against OSP, asserting, among other things, violations of Title VII, ORS 659A.030(1) and state

1 whistle blowing laws, and for the torts of intentional infliction
2 of emotional distress and wrongful discharge. This court granted
3 defendant OSP's motion for summary judgment on all claims on July
4 11, 2008.

5 Standard

6 Federal Rule of Civil Procedure 54(d)(1) provides that
7 "costs other than attorneys' fees shall be allowed as of course
8 to the prevailing party unless the court otherwise directs."
9 Furthermore, 28 U.S.C. § 1920 provides in relevant part:

10 A judge or clerk of any court of the United States may
11 tax as costs the following:

12 (1) Fees of the clerk and marshal;

13 (2) Fees of the court reporter for all or any part of the
14 stenographic transcript necessarily obtained for use in the
15 case;

16 (3) Fees and disbursements for printing and witnesses;

17 (4) Fees for exemplification and copies of papers
18 necessarily obtained for use in the case.

19 "The prevailing party in a civil rights action . . . is in the
20 same position as any other prevailing party with respect to costs
21 available pursuant to 28 U.S.C. § 1920." Goostree v. Tenn., 796
22 F.2d 854, 864 (6th Cir. 1986).

23 "By its terms, the rule creates a presumption in favor of
24 awarding costs to a prevailing party, but vests in the district
25 court discretion to refuse to award costs." Ass'n of Mexican-
26 American Educators v. Cal., 231 F.3d 572, 591 (9th Cir. 2000).
27 See also Champion Produce, Inc. v. Ruby Robinson, Inc., 342 F.3d
28 1016, 1022 (9th Cir. 2003) ("Rule 54(d)(1) creates a presumption
in favor of awarding costs to a prevailing party, but the
district court may refuse to award costs within its discretion.")

1). However, that discretion is not unlimited; the court must
2 "specify reasons" for a denial of costs. Champion Produce, 342
3 F.3d at 1022; Ass'n of Mexican-American Educators, 231 F.3d at
4 591-92. The court must explain why the circumstances are not
5 ordinary and why it would be "inappropriate or inequitable to
6 award costs." Id. (quoting Ass'n of Mexican-American Educators,
7 231 F.3d at 593).¹

8 Conversely, the district court need not give affirmative
9 reasons for an award of costs; it "need only find that the
10 reasons for denying costs are not sufficiently persuasive to
11 overcome the presumption in favor of an award." Save Our Valley
12 v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003). The Ninth
13 Circuit has never held that a court must specify reasons for
14 abiding by the presumption and taxing costs to the losing party.
15 335 F.3d at 945. Therefore, when a court states no reason for
16 awarding costs, it is assumed to have acted on the presumption.
17 Id.

18 Most recently, citing to Save Our Valley, the court in
19 Begley v. County of Kauai, Nos. 06-15801, 06-16554, 2008 WL
20 2704668 (9th Cir. June 18, 2008), held that the district court
21 did not abuse its discretion by awarding costs to defendants in
22 a civil rights action because Fed. R. Civ. P. 54(d) "creates a
23 'presumption for awarding costs' to prevailing defendants, and
24

25 ¹ The Ninth Circuit has held that appropriate reasons for denying
26 costs include limited financial resources, misconduct, and the
27 chilling effect on future civil rights plaintiffs of imposing high
28 costs. Champion Produce, 342 F.3d at 1022. In Ass'n of Mexican-
American Educators, a refusal was justified partly because of the
gravity and effect of the plaintiff's claim on state policy, even
though she lost. 231 F.3d at 593.

1 [plaintiff] failed to show why costs should not have been
2 awarded."

3
4 Discussion

5 Plaintiff's objections are not sufficiently persuasive to
6 overcome the presumption in favor of allowing defendant's costs.
7 Plaintiff's vague objections include a "severe chilling effect"
8 on potential civil rights plaintiffs and the disparity of
9 resources between the parties. Plaintiff's objection is not
10 accompanied by any documentation supporting the latter
11 proposition, nor does plaintiff explain how this case is similar
12 to cases like Ass'n of Mexican-American Educators, where a
13 \$216,443.67 cost bill was denied in large part because the action
14 had a far-reaching effect on "tens of thousands of Californians"
15 and the record demonstrated that the plaintiffs' resources were
16 limited. 231 F.3d at 593.

17 The presumption in favor of awarding costs is not overcome
18 in this case. The losing party has offered no proof of limited
19 resources for the bill of \$3,227.00, and that amount is far less
20 than the large sums in the aforementioned cases. This court
21 therefore exercises its discretion to award the bill of costs.

22
23 Conclusion

24 For the foregoing reasons, defendant OSP's cost bill in the
25 amount of \$3,227.00 is allowed.

26
27 Dated this 25 day of August, 2008.



THOMAS M. COFFIN

United States Magistrate Judge